Chapter 1

MALTA

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I INTRODUCTION

Albeit limited in size, with a total of 29 domestic issuers having listed equity securities on the Official List of the Malta Stock Exchange (MSE) as at 1 January 2022, the Maltese IPO market has been increasingly active in recent years.

The years 2017 and 2018 witnessed the IPO of equity securities in local retail giants PG plc and Main Street Complex plc, the former being an equity offering of 27 million ordinary shares at an offer price of €1 per share, and the latter comprising an offer for sale of 7.5 million already existing ordinary shares at an offer price of 65 cents per share and an offer for subscription of 5.2 million newly issued shares at an offer price of 65 cents per share.

This positive trend continued in 2019, which witnessed the primary listing of almost 100 million ordinary shares at an offer price of 49 cents per share in BMIT Technologies plc, which is the subsidiary of a major player in the Maltese telecommunications industry, GO plc. Other notable transactions in the equity listing space in 2019 include the issuance of bonus shares and a rights offer by five well-established listed entities with a combined initial market capitalisation of €220.1 million.

The year 2020 largely maintained this momentum, with a primary listing of equity in Harvest Technology plc, which is an entity involved in the provision of systems integration services and IT solutions, while the year 2021 defied pandemic-related uncertainty to oversee three new primary listings of equity in LifeStar Insurance plc, VBL plc and Hili Properties plc, and a listing of preference shares by RS2 Software plc having a combined market capitalisation of €227.4 million. The MSE Equity Total Return Index closed 2021 at 8,199.397, down by 3.2 per cent from 8,471.335 at the end of 2020. The Index peaked at 8,456.774 on 5 January 2021 and fell to its lowest level at 7,728.372 on 26 March 2021.

First-time issuers tapping into the equity markets in Malta usually adopt one, or a combination, of the following IPO structuring methods:

a an offer for sale: an invitation to the public to purchase equity securities of the issuer that are already in issue (i.e., from existing shareholders);

b an offer for subscription: an invitation to the public to purchase equity securities of the issuer that have not yet been issued; and

c an intermediaries offer: a marketing of securities in the form of an offer of those securities by the issuer to its intermediaries for them to allocate to their own clients.

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The relevant regulatory body set out in the Financial Markets Act[2] is the Malta Financial Services Authority (MFSA). Not only is the MFSA the competent authority for the authorisation and supervision of regulated markets in Malta but, pursuant to amendments to the Financial Markets Act in 2021, it now oversees applications for admissibility to listing of financial instruments onto the Official List and ensures compliance of the various issuers with the Capital Markets Rules issued by it.

If an IPO relates to an offer to the public (as defined under the Companies Act)[3] of equity securities that are not admitted to listing on the Official List of the MSE, then the relevant regulatory authority responsible for scrutinising the relative prospectus and ensuring compliance with applicable law is the Malta Business Registry.

II GOVERNING RULES

The relevant Maltese governing rules are:

a the Financial Markets Act;
b the Prevention of Financial Markets Abuse Act;[4]
c the Companies Act;
d the Capital Markets Rules issued by the MFSA; and
e the Bye-Laws of the MSE.

Local legislation effectively implements all relevant EU directives, including:

a the MiFID II Directive 2014/65/EU;
b the Transparency Directive 2004/109/EC, as amended by Directive 2013/50/EU;
c the Takeover Directive 2004/25/EC;
d the Shareholder Rights Directive 2007/36/EC, as amended by Directive (EU) 2017/828; and
e the Market Abuse Directive 2014/57/EU.

As an EU Member State, relevant EU regulations are directly applicable in Malta and include:

a the Market Abuse Regulation (EU) 596/2014; and
b the Prospectus Regulation (EU) 2017/1129, as supplemented by Commission Delegated Regulation (EU) 2019/979 and Commission Delegated Regulation (EU) 2019/980.

i Main stock exchanges

There are three main trading venues in Malta – two being regulated markets (as defined under MiFID II) and the other being a multilateral trading facility (also as defined under MiFID II).

2 Chapter 345 of the Laws of Malta.
3 Chapter 386 of the Laws of Malta.
4 Chapter 476 of the Laws of Malta.

Regulated markets

The Official List of the MSE (the Official List) is the main regulated market in Malta. In terms of admissible securities, both equity securities (including units in collective investment schemes) and debt securities (such as government bonds and treasury bills) are regularly listed on the Official List, which is often referred to as the 'main market'. The Official List tends to attract major local conglomerates and currently boasts a market capitalisation of €14.67 billion.

There is a second regulated market in Malta; the Institutional Financial Securities Market (IFSM); however, equity securities cannot be listed on the IFSM. The IFSM is specifically designed for institutional investors on which only the following categories of securities can be listed: debt securities, asset-backed securities, insurance-linked notes, convertible debt securities and derivative securities.

Multilateral trading facilities

In addition to the Official List, the only other market on which equity securities may be listed in Malta is a multilateral trading facility called Prospects. Prospects is operated by the MSE and is specifically targeted towards issuers that are small and medium-sized enterprises (SMEs) (both local and foreign). It currently has a market capitalisation of approximately €93 million. Prospects is fairly popular with local SMEs for small bond issues (typically of €5 million or less), with 23 domestic issuers currently on the Prospects List. Notwithstanding its popularity among debt issuers, there have only been two equity listings on Prospects to date.

ii Overview of listing requirements

For the purposes of this and the following sections, this chapter will focus mainly on the conditions for admissibility to the listing of equity securities on the Official List.

To be eligible for admission to listing on the Official List, an issuer must be duly incorporated in accordance with the relevant laws of its domicile and must further operate in accordance with its memorandum and articles of association. Moreover, the particular equity securities for which authorisation for admissibility to listing is being sought must be issued in conformity with the law of the issuer's domicile, as well as with the requirements of the issuer's memorandum and articles of association. The securities must be freely transferable, and expected to enjoy adequate continuity of dealing.

In terms of market capitalisation, except where securities of the same class have already been admitted to listing on the Official List, the expected aggregate value of the equity securities for which authorisation for admissibility to listing is being sought must be at least €1 million. Notwithstanding this, the MFSA may effectively admit equity securities of a lower value where, in its discretion, it is satisfied that there will be an adequate market for the securities concerned. An application for the primary listing of equity instruments must relate to the entirety of the securities of the particular class for which listing on the Official List is being sought.

In terms of further issuer-specific requirements, the applicant must also enjoy an issued share capital of at least €1 million, fully paid up, and must have published or filed audited accounts that cover, at least, the three financial years preceding the application for admissibility to listing on the Official List. The audited annual accounts must be consolidated accounts of both the applicant and its subsidiaries (unless the MFSA agrees otherwise), and the relative audit reports must not contain any qualifications (or, if they do, the nature

of those qualifications must be duly disclosed alongside any relevant explanations by the directors of the applicant as may be deemed necessary). The last year of audited information provided may not be older than the 18 months prior to the date of the relative prospectus. The issuer must also have a shareholders' funds net of intangible assets that amounts to at least €600,000.

Subject to certain exceptions, an applicant for listing must, either by itself or via one or more of its subsidiary undertakings or affiliates, demonstrate that:

a at least 75 per cent of its business is supported by a historical revenue earning record covering the three financial years for which the audited accounts are submitted;

b it controls the majority of its assets and has done so for at least three financial years; and

c it will be carrying on an independent business as its main activity.

The applicant must also demonstrate to the satisfaction of the MFSA that at least 25 per cent of the equity securities for which listing is being sought is, or will be, in public hands – in other words, not held by related parties (e.g., directors of the applicant or any of its subsidiary undertakings or persons connected with those directors) or substantial shareholders.[5] An issuer will be expected to inform the MFSA forthwith should the proportion of equity securities in public hands (once listed) fall below the 25 per cent threshold.

iii Overview of law and regulations

The relevant laws and regulations applicable to the Maltese IPO regime have already been set out earlier in this section.

The Capital Markets Rules are possibly the most important reference point for issuers intent on admitting their securities onto the Official List as, in addition to setting out the conditions for admissibility of financial instruments and the various application requirements, the Capital Markets Rules also set out the continuing obligations that apply to issuers on an ongoing basis post-listing. In this regard, the Capital Markets Rules also transpose into Maltese law the relevant requirements of the Transparency Directive and the Shareholder Rights Directive (as well as the requirements of the Takeover Directive that become relevant in the context of a takeover bid).

III THE OFFERING PROCESS

i General overview of the IPO process

At the outset, the IPO and listing process in Malta typically ranges in duration from four to six months.

The first step in the offering process is the appointment of a sponsor. The sponsor must be an independent entity from the issuer holding either a Category II or III licence under the Investment Services Act or otherwise authorised to provide investment services under MiFID II. It is tasked with guiding the issuer through the admission process, liaising with the MFSA on the issuer's behalf, coordinating the efforts of the issuer's other advisers (including

5 'Substantial shareholder' refers to a person who is either entitled to exercise control over 10 per cent or more of the votes at the general meeting of the applicant or otherwise in a position to control the composition of the majority of the board of directors of the applicant.

legal advisers and auditors) and ensuring that the issuer complies with the relevant conditions and requirements for admissibility to listing under the Capital Markets Rules and the MSE Bye-Laws.

The issuer must also apply to both the MFSA for authorisation of admissibility of the equity securities to listing and the MSE for admission of those securities (once declared admissible) to listing and trading on the Official List.

The applicant must notify the MFSA of its intention to submit an application for admissibility to listing at least one month prior to the submission of the application proper, as well as the first draft of the accompanying prospectus. Once the applicant's intention has been made clear to the MFSA, focus usually shifts onto the underlying groundwork, including the conversion of the issuer to a public limited company (if the issuer is a private limited company) and any and all amendments to the issuer's memorandum and articles of association as may be necessary for the purposes of the IPO and listing. Work will also proceed on the drafting of the prospectus and other necessary transaction documents (including underwriting agreements and agreements with service providers).

The prospectus must comply with all the relevant disclosure requirements mandated by the Prospectus Regulation and is required for an equity offering that involves either an offer to the public or an admission to trading on a regulated market.

Certain types of public offers are (in terms of the Prospectus Regulation and the Companies Act) exempt from the requirement to publish a prospectus, such as offers of securities to 'qualified investors' (as defined under MiFID II), an offer where the minimum consideration paid per investor is at least €100,000 and an offer where the total consideration of securities being offered in the European Union or European Economic Area (EEA) does not exceed €5 million. This notwithstanding, even if a particular public offer is considered to be exempt in this regard, a prospectus would still be required in cases where the shares are to be listed on the Official List (as it is a regulated market in terms of MiFID II).

While the Prospectus Regulation and the Capital Markets Rules provide for a few limited exemptions from the requirement to publish a prospectus for certain categories of admission to listing, including where the listing relates to a secondary listing of shares that are already listed on another regulated market (subject to the applicability of certain conditions), first-time issuers considering an IPO and listing on the Official List would usually not qualify for those exemptions.

Once the draft prospectus and other supporting documentation is in place, the applicant proceeds with the submission of the draft to the MFSA, together with the draft application for admissibility to listing, which must, among other things, be accompanied by the historical financial information referred to above and the necessary corporate authorisations sanctioning the application for admissibility to listing.

Around the time that the prospectus has reached an advanced stage, the applicant will typically embark on an investor roadshow organised by the sponsoring stockbroker to better gauge the interest of investors in the proposed IPO. The roadshow (or market soundings) usually takes the form of information sessions and meetings with local brokers.

Depending on the level of interest shown, the issuer may opt to privately place a percentage of the shares with a restricted number of institutional investors prior to the publication of the prospectus and the corresponding offer to the public. Once final written notice of approval of admissibility to listing has been granted by the MFSA, the issuer may further wish to target the local retail public via a broader marketing campaign.

In respect of post-submission of the draft documentation, the MFSA provided its comments on the drafts submitted, and the applicant is expected to revert with revised documentation until the time specified in the final agreement has been reached, at which stage the applicant will be expected to submit the final application for admissibility to listing (including the final version of the prospectus), as well as the application for admission to listing of the securities to the MSE. Approval of the application is then granted by the MFSA within a maximum period of 20 working days.

Once the respective admissibility application and prospectus have been approved by the MFSA, the applicant must proceed to publish the prospectus at least six working days prior to the shares being admitted to listing on the Official List. A formal notice announcing publication of the prospectus must also be published in a local daily newspaper at least six working days before the opening of the IPO. The shares will then be admitted to trading on the Official List. Once closed, the issuer will publish the results of the offer via a company announcement, and the proceeds of the IPO will be received by the issuer.

ii Pitfalls and considerations

A company going public in Malta ought to consider the following points.

Advertisements

The Investment Services Act requires all forms of investment advertisements relating to a possible subscription of securities to be first approved by a local licence holder. As previously implied, the Capital Markets Rules are generally quite onerous when it comes to accepted levels of advertising in that any advertisement relating to listed securities, or securities that are yet to be admitted to listing on the Official List, must be clearly recognisable and easily comprehensible. An advertisement must not contain any unverifiable claims and must be consistent with any information contained in the prospectus.

Transparency and market abuse

Although this generally relates to issuers considering an IPO in any jurisdiction, raising funds on the capital markets comes at a cost: increased transparency and compliance obligations.

Issuers with listed securities on the Official List must abide by the provisions of the Transparency Directive (as transposed into the Capital Markets Rules), other local transparency obligations set out in the Capital Markets Rules, which – among other things requires periodic financial reporting within stipulated time frames – as well as the provisions of the Market Abuse Regulation, which imposes a number of significant obligations on issuers relating to the prevention and detection of market abuse, not least of which is a requirement to disclose to the public inside information (material information relating to an issuer's business that may have a significant effect on the price of the listed securities).

The Prevention of Financial Markets Abuse Act sets significant penalties for various breaches of the Market Abuse Regulation, which may be both administrative and criminal in nature and may range between €500,000 and €15 million or be a percentage of annual turnover.

iii Considerations for foreign issuers

The listing procedure for a foreign company is the same as the procedure that applies to domestic issuers. At the time of writing, no foreign companies are listed on the Official List.

If Malta is not the home Member State for the purposes of the Prospectus Regulation, an issuer intent on offering its equity securities to the public in Malta, or on listing those securities on the Official List, must have the prospectus approved by the competent authority of the issuer's home Member State (in the case of an EU-based issuer, the Member State where the issuer has its registered office), following which the approved prospectus is passported into Malta by delivery of a copy of the approved prospectus and a certificate of approval issued by the competent authority of the home Member State to the MFSA.

Although foreign issuers may list their securities on the Official List, if an applicant incorporated in a non-EEA Member State is not already listed in its jurisdiction of incorporation (or in the jurisdiction in which the majority of its shares are held), the MFSA must be satisfied that the absence of a primary listing in that jurisdiction is not a result of investor protection concerns of the foreign regulator; the MFSA will generally enquire why an application for listing was not filed or was rejected in that jurisdiction.

IV POST-IPO REQUIREMENTS

Chapter 5 of the Capital Markets Rules implements the relevant provisions of the Transparency Directive and imposes a number of continuing obligations with which issuers must comply, subsequent to an admission to listing. Some of the more important post-IPO requirements imposed on issuers are as follows.

i Company announcements

Issuers are generally expected to bring useful and relevant facts to the attention of the market without delay via company announcements. Information to be disclosed in this respect includes:

a price-sensitive facts arising in the issuer's sphere of activity and that are not public knowledge (i.e., the disclosure of inside information);

b any changes in the composition of the issuer's board of directors; and

c the date fixed for any board meetings convened for the purpose of declaring or recommending a dividend on the shares admitted to listing or for the approval of the issuer's financials.

ii Periodic financial reporting

Issuers are expected to publish half-yearly and annual financial reports in accordance with the requirements set out in Chapter 5 of the Capital Markets Rules (transposing the relevant provisions of the Transparency Directive).

iii Corporate governance

Issuers are subject to the principles set out in the Capital Markets Rules' Code of Principles of Good Corporate Governance, which tackle, among other things, the composition of the issuer's board of directors and the establishment of a number of committees, such as the audit, nominations and remunerations committees. The reasons behind any failure to comply with those principles must be disclosed by the issuer in its IPO prospectus and on an ongoing basis in the corporate governance statement forming part of the annual financial report.

iv Transactions with related parties

The Capital Markets Rules set out a number of safeguards to ensure that transactions entered into with related parties are at arm's length and carried out on a normal, commercial basis. The intention is to ensure that related parties would not have taken advantage of their 'preferred' position.

The Capital Markets Rules, therefore, mandate due vetting and approval of a transaction to be entered into with a related party by the issuer's audit committee, among other requirements. Where a related party transaction is considered to be a material related party transaction, and the transaction is not approved by the audit committee, a company announcement and shareholder approval for the transaction is required for the transaction to take place.

v Share dealing restrictions

Listed companies must implement an internal code of dealing that its directors and certain officers and employees of the issuer (and the group of which it forms a part) must comply with, primarily to limit their ability to deal in securities of the issuer (either directly or indirectly) for the purpose of counteracting the risk of insider dealing. The dealing code must include and comply with any dealing restrictions set out in the relevant section of the Capital Markets Rules, as well as similar restrictions and requirements that apply in terms of the Market Abuse Regulation.

vi Significant transactions

Depending on their size, certain transactions require prior announcement to the public or shareholder approval to be undertaken.

V OUTLOOK AND CONCLUSION

IPOs have historically constituted only a small portion of new issuances each year (with the local capital market being heavily predisposed towards corporate bonds), and this is not expected to change in the near future. This is owing to the fact that the Official List remains a largely domestic market (in terms of both issuers and investors), and there are only a certain number of companies for which an IPO might make sense given the size of the Maltese islands.

However, the hope is that local issuers of a certain quality and size will continue to consider an IPO as a viable option and come to the market from time to time, including in 2022. Indeed, as at the time of writing, there have been two primary equity listings in Malta for 2022, one of which relates to the listing of the entire issued share capital of one of Malta's foremost credit institutions.

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Nicholas Curmi heads Ganado Advocates' capital markets practice, where he advises on a broad range of securities regulation, structured finance and financial services matters, including private and public offerings of securities, listing on Maltese and foreign markets. He assists listed issuers with their continuing obligations in terms of Malta's listing rules and all relevant EU securities regulation.

Nicholas regularly advises on the establishment of securitisation structures. He has represented originators, arrangers and investors in securitisation transactions involving a variety of asset classes and has advised on a number of innovative deals that have made use of the unique benefits offered by Maltese securitisation vehicles.

Nicholas was co-chair of the Malta EU Council Presidency 2017 Working Party on the proposed EU STS Securitisation Regulation, where he was responsible for leading the technical negotiations on the Regulation on behalf of the EU Council.

Nicholas is admitted to practise law in both Malta and New York.

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Luke Hili is an associate within Ganado Advocates' capital markets practice. Luke regularly advises clients wishing to raise finance on the capital markets and has, thus far, assisted on equity and debt listings on the local and foreign markets, as well as structured finance and securitisation transactions.

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